

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BENJAMIN R. ROSS,)
Petitioner,)
v.) Case No. 1:20-cv-211
WARDEN TRATE,)
Respondent.)

MEMORANDUM ORDER

This habeas corpus action was received by the Clerk of Court on July 24, 2020. The matter was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

In his petition, Petitioner maintains that he is actually innocent of being a felon in possession of a firearm based on the United States Supreme Court's decision in *Rehaif v. United States*, ___ U.S. ___, 139 S.Ct. 2191 (2019).

This matter was held in abeyance for a time pending the outcome of *United States v. Nasir*, 982 F.3d 144 (3d Cir. 2020) and *Greer v. United States*, ___ U.S. ___, 141 S.Ct. 2090 (2021). Thereafter, on September 6, 2022, Magistrate Judge Lanzillo issued a Report and Recommendation recommending that the petition for writ of habeas corpus be dismissed. ECF No. [11]. Despite being advised of the opportunity to file Objections to the Report and Recommendation, Petitioner failed to file any.

“If a party objects timely to a magistrate judge’s report and recommendation, the district court must ‘make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.’” *EEOC v. City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017) quoting 28 U.S.C. § 636(b)(1). Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the magistrate judge’s findings or recommendations. 28 U.S.C. § 636(b)(1); Local Rule 72(D)(2). Upon *de novo* review, the Court finds no error in Magistrate Judge Lanzillo’s Report and Recommendation as Plaintiff’s Objections are a reiteration of his opposition to the summary judgment motion.

After *de novo* review of the petition and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 27th day of September 2022;

IT IS ORDERED that the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 be dismissed.

AND, IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued on September 6, 2022 [ECF No. 11] is adopted as the opinion of the court. The Clerk of Court shall close this case.



SUSAN PARADISE BAXTER
United States District Judge